

Sutherland, Asbill & Brennan, L.L.P.

ATLANTA • AUSTIN • NEW YORK • WASHINGTON

1275 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20004-2404

TEL: (202) 383-0100
FAX: (202) 637-3593

February 13, 1997

RANDOLPH J. MAY
DIRECT LINE: (202) 383-0730
Internet: rmay@sablaw.com

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BY MESSENGER

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

cc 94-1

Re: **CC Docket No. 96-262**

Dear Mr. Caton:

Enclosed for filing in CC Docket No. 262 you will find an original and 16 copies of the Reply Comments of CompuServe Incorporated and Prodigy Services Corporation and also a computer diskette containing the comments in "read only" format. Please date stamp the "stamp and return" copy of comments for return by the messenger.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Randolph J. May

Randolph J. May

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Randolph J. May
SUTHERLAND, ASBILL & BRENNAN
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404
(202) 383-0100

Their Attorneys

**CompuServe and Prodigy
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SUMMARY

In their initial comments, CompuServe and Prodigy demonstrated that the Commission should adopt its tentative conclusion that per-minute carrier access charges should not be imposed on enhanced service providers. They showed that the current ESP access policy has been very successful and that imposition of carrier access charges would have a very detrimental impact at this time on the further growth and development of this still-evolving industry. At least pending completion of fundamental access charge reform and the separate Notice of Inquiry proceeding, the Commission should not extend the current system of non-cost-based, uneconomic carrier access charges to ESPs.

A wide variety of parties agreed with the position of CompuServe and Prodigy, including a number of public interest groups which pointed out that imposition of carrier access charges on ESPs would threaten the broad participation and high level of accessibility of what has become an important mode of free speech. The principal opponents of the Commission's tentative conclusion are five of the seven Bell Companies, although their opposition is put forward with varying degrees of enthusiasm. In effect, they seem to be arguing for an information service demand suppression policy based on the claim that they are not receiving enough revenue from the increased level of independent ESP usage and that it is discriminatory for interexchange carriers to be required to pay per-minute interstate access charges while ESPs are allowed to use state-tariffed flat-rated local loops for their traffic.

In these reply comments, CompuServe and Prodigy show that the RBOCs' claims that they are not receiving sufficient revenues to cover the costs imposed by ESP usage of their local facilities is not supported. They fail to take into account all of the revenues they receive from ESP usage of their facilities and the usage of the ESPs' customers. With regard to alleged discrimination, if anything it would be discriminatory to treat ESPs differently from other end users such as financial institutions and private data networks who utilize local facilities in the same way. In any event, it is clear that the Commission wishes to examine issues relating to the cost/revenue relationships of the services ESPs presently use and the more data-friendly services they hope to use in the future in the NOI proceeding. The same is true of issues relating to alleged discrimination among users of local exchange facilities and the jurisdictional nature of the traffic. These issues have been identified specifically for the NOI proceeding.

Most parties that commented on the issue agreed with CompuServe and Prodigy that the Commission should adopt the "per facility" approach to assessing

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subscriber line charges on ISDN and similar derived channel services. The major local exchange carriers point out that this approach is consistent with cost causational principles, and they agree with CompuServe and Prodigy that the "per facility" approach will promote the more rapid deployment of ISDN service.

Finally, while the local exchange carriers advocate that they be given discretion to establish call setup charges, they provided no concrete information concerning the costs they claim they incur for setup or the rates they would propose. On the other hand, CompuServe and other parties showed that imposition of call setup charges would have an adverse impact on the financial institutions and other businesses dependent upon efficient transactions processing. The Bankers Clearinghouse is correct that the Commission should determine whether the benefit of recovering call setup costs separately outweighs the effort and expense of implementing tracking and billing systems needed to recover these costs. In any event, in light of the contribution these short duration data calls almost certainly make to the more efficient operation of the public switched network, the Commission should defer action on the call setup issue pending the presentation of more supporting information by the LECs and progress in the NOI proceeding which is charged with examining all aspects of ESP usage of the public network.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for Local Exchange Carriers)	CC Docket No. 94-1
)	
Transport Rate Structure and Pricing)	CC Docket No. 91-213
)	
Usage of the Public Switched Network by Information Service and Internet Access Providers)	CC Docket No. 96-263
)	
)	

**REPLY COMMENTS OF COMPUSERVE INCORPORATED
AND PRODIGY SERVICES CORPORATION**

CompuServe Incorporated and Prodigy Services Corporation, by their attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby submit these reply comments in response to the Notice of Proposed Rulemaking ("NPRM") released December 24, 1996, in the above-captioned proceeding. As noted in their initial comments, CompuServe and Prodigy are among the nation's leading independent providers of innovative Internet and online services, having been for many years at the forefront of the development of the information services

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industry. They make available to their customers a wide variety of informative, entertaining, productivity-enhancing information services.

In their initial comments, CompuServe and Prodigy supported the Commission's tentative conclusion not to impose per-minute carrier access charges on enhanced service providers ("ESPs"). They demonstrated that the Commission was correct in recognizing that the current ESP access policy has been very successful and that the imposition of per-minute carrier access charges on ESPs likely would have a very detrimental impact at this time on the further growth and development of this still-evolving industry. They also showed that, at least pending completion of fundamental access charge reform and the separate Notice of Inquiry ("NOI") proceeding just initiated to examine issues relating to ESP usage of the public switched network and the deployment by local exchange carriers of data-friendly technologies, the Commission should not extend the current system of non-cost-based, uneconomic carrier access charges to ESPs. CompuServe and Prodigy urged the Commission not to allow the LECs to subject independent ESPs to a price squeeze by increasing the ESPs' access costs. Because independent ESPs remain almost entirely dependent on the LECs for the local facilities needed to reach their subscribers, this would be the result if the LECs could increase the ESPs' access charges while at the same time competing against them.

CompuServe and Prodigy showed that the Commission should require subscriber line charges ("SLCs") to be assessed on a "per facility" rather than "per derived channel" basis. This policy appears to be consistent with cost causational principles and it would also promote

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the more rapid deployment of ISDN service, an important near-term technology with potential to spur more rapid development of the information superhighway. Any deviation from the "per facility" approach should be as small as possible.

Finally, CompuServe showed why the Commission should not permit or require LECS to impose a separate call setup charge at this time.^{1/}

CompuServe and Prodigy believe that they presented most of what should be said about the above issues in their initial comments, and for this reason, these reply comments will be relatively brief. With regard to the ESP access charge issue, it seems clear that the Commission quite properly intends to address the fundamental technical/operational/ economic issues relating to ESP usage of the public network in the NOI proceeding, and that the only issue before the Commission in the NPRM phase is the narrow one whether the per-minute carrier access charge regime should be applied to ESPs.^{2/}

I. THE COMMISSION SHOULD ADOPT ITS TENTATIVE CONCLUSION THAT ESPS SHOULD NOT BE REQUIRED TO PAY PER-MINUTE CARRIER ACCESS CHARGES

A wide range of parties agreed with CompuServe and Prodigy that the Commission should not impose per-minute carrier access charges on ESPs at this time.^{3/} Among

^{1/} As in the case of the initial comments, the section of this reply relating to the call setup charge issue is submitted on behalf of CompuServe only.

^{2/} NPRM, at para. 283.

^{3/} See, e.g., Microsoft Comments, January 29, 1997; Newspaper Association of America Comments, January 29, 1997; National Cable Television Association Comments, January 29,

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those who supported the Commission's tentative conclusion are public interest organizations, filing as a coalition, who stated that imposition of carrier access charges on ESPs "would risk quashing the broad participation and high accessibility of what has become a highly important mode of free speech . . . and especially [would] limit use by lower-income citizens."^{4/}

The principal opponents of the Commission's tentative conclusion are five of the seven Regional Bell Operating Companies ("RBOCs"), although their opposition, based upon broad generalizations, is mostly muted and put forward with varying degrees of enthusiasm.^{5/} Frankly, what comes through more than anything else in the RBOC comments is their view that (1) per-minute carrier charges would be helpful in suppressing demand for independent ESP services and that (2) it is discriminatory for carriers to be required to pay interstate access charges that are assessed on a per-minute basis while ESPs are allowed to use state-tariffed flat-rated local loops for their traffic. Each of these points will be addressed in turn.

1997; and Worldcom Comments, January 29, 1997.

^{4/} Comments of Media Access Project, Center for Democracy and Technology, The Benton Foundation, Electronic Frontier Foundation, and Voters Telecommunications Watch, January 29, 1997, at 4 ("Joint Public Interest Organization Comments").

^{5/} As far as CompuServe and Prodigy can determine, Ameritech takes no position on the ESP access charge issue in its initial comments, while BellSouth, as discussed further below, commendably supports the Commission's tentative conclusion. America's Carriers Telecommunication Association believes that some form of access charges should be imposed on ESPs, but while the precise relief it is seeking is unclear, the issues that underlay the "radical reform" it proposes - "a fair and flat access 'tax'" - are certainly not appropriate for resolution in the NPRM proceeding. America's Carriers Telecommunication Association Comments, January 29, 1997, at 27.

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The RBOCs do not really dispute that imposition of current per-minute access charges will suppress consumer demand for information services. Indeed, their unsupported and anecdotal claims of network congestion almost seem designed to encourage the adoption of such a demand suppression policy. But the appropriate public policy, as the Commission properly recognizes, should be to encourage -- not to discourage -- the growth of Internet and information services made available by independent ESPs.^{6/}

As for RBOC claims that absent payment of per-minute carrier access charges ESPs are not covering the costs for the local exchange services they utilize, CompuServe and Prodigy showed in their initial comments that this unsupported claim is not true and that showing will not be repeated here.^{7/} Suffice it to say that when Pacific Telesis refers to the "unreimbursed use" of the network by ESPs,^{8/} it is being disingenuous. It ignores the revenues it receives not only from the business lines and associated services ESP themselves use to receive calls (the prices of which business lines and associated services such as call forwarding and hunt group

^{6/} As CompuServe and Prodigy have pointed out, the 1996 Telecommunications Act states that it is the policy of the United States "to promote the continued development of the Internet and other interactive computer services" and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services. . . ." 47 U.S.C. § 230(b)(1) and (2). BellSouth states that the use of the Internet "represents a potentially important resource in a variety of public policy areas such as education and medicine." BellSouth Comments, January 29, 1997, at 86.

^{7/} See CompuServe and Prodigy Comments, January 29, 1997, at 12-14 and also Selwyn and Laszlo, "The Effect of Internet Use on the Nation's Telephone Network," January 22, 1997, at 19-34, attached to the comments of the Internet Access Coalition.

^{8/} Pacific Telesis Group Comments, January 29, 1997, at 80.

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capabilities are set to recover their full costs, if not more), but also the revenues received from the ESPs' residential and business customers for the local exchange services they use. In any event, to the extent any real dispute exists about the cost/revenue relationship for the services ESPs use, it seems clear that the Commission intends that this issue be examined in the NOI, not the NPRM proceeding, because it is in the NOI proceeding in which the Commission stated "[w]e are also particularly interested in data on the incumbent LECs' costs directly related to ESPs' use of the PSTN, [and] on incumbent LECs' revenues attributable to ESP traffic (including second phone line revenue). . . ."^{9/}

Rather than trying to make the substantive case that ESP service providers and their customers are not covering the costs they cause the LECs to incur, (probably because they recognize that the Commission now has initiated an NOI to examine this issue), some of the RBOCs choose instead to argue that the current access charge regime unreasonably discriminates in favor of the ESPs as against the interexchange carriers.^{10/} It's not clear why the RBOCs are making this argument on behalf of the IXC's, but, in any event, the RBOCs' view of discrimination, arguing that ESPs should be treated like carriers, is wrong. It completely ignores the other side of the discrimination coin.

^{9/} NOI, at para. 315.

^{10/} See, e.g., Pacific Telesis Group Comments, January 29, 1997, at pages 74-76; Southwestern Bell Telephone Company, January 29, 1997, at page 19; U S West Comments, January 29, 1997, at page 84.

ESPs who acquire state-tariffed business access lines generally use these local lines like other LEC business line customers. It would constitute discrimination **against** ESPs to treat them differently from other end users, such as a talk radio station or a financial institution "hot line" which receives many terminating local calls. More fundamentally, it would be impossible to distinguish between major ESPs such as CompuServe, Prodigy, or AOL, who can be identified easily as ESPs and the tens of thousands of smaller bulletin board providers and Internet access providers who use local exchange facilities in precisely the same way as the major ESPs but on a smaller scale. And, the same, of course, is true with regard to private corporate data networks -- not generally characterized as ESPs because they don't make service (or much service?) available to third parties -- who use local business access lines in precisely the same way as the major ESPs. It obviously would be unreasonably discriminatory to charge only the ESPs that somehow can be identified as an "ESP" on a basis different than these other entities who would not be identified as "ESPs."

It is useful to keep in mind that the Commission has no definition of "enhanced service provider" in its rules. It does, of course have a definition of "enhanced service" which relates to the technical/functional nature of the service,^{11/} and in a tautological sense an entity which provides enhanced services may be called an ESP. But the Commission's rule definition has nothing to do with classifying an entity as an ESP on the basis of whether, or the extent to

^{11/} 47 C.F.R. § 64.702(a).

which, the entity is making available the service to third parties.^{12/} Any approach which tries to define various shades of end users for purposes of assessing access charges is bound to lead to discrimination **against** major ESPs vis-a-vis other end users. Here again the Commission recognized that it would be more appropriate to examine all the ramifications of this issue in the NOI proceeding. As some of the RBOCs acknowledge,^{13/} their discrimination contentions, in effect, relate to the jurisdictional issues that arise from ESPs' use of state-tariffed business access lines. In the NOI, the Commission specifically "seek[s] comment on jurisdictional, metering, and billing questions, given the difficulty of applying jurisdictional divisions or time-sensitive rates to packet-switched networks such as the Internet."^{14/}

In sum, the Commission promptly should adopt its tentative conclusion not to consider changes to the current ESP access charge treatment pending the completion of fundamental access charge reform and the NOI proceeding. BellSouth agrees and puts it this way:

The Internet phenomenon has never been full analyzed within the context of access charges. . . . Given the importance of the Internet in the development of public policy, the Commission should be sure that its telecommunications policy fosters efficient use of the telecommunications network which includes public

^{12/} This explains why in fashioning the access charge regime, the Commission created only two categories of users of the local access facilities: "carriers" and "end users," and it defined "end user" as "any customer of an interstate or foreign telecommunications service that is not a carrier. . . ." 47 C.F.R. § 69.2(m).

^{13/} See, e.g., Pacific Telesis Group, at 75; U S West Comments, at 83.

^{14/} NOI, at para. 315.

switched voice traffic as well as Internet traffic. To achieve this goal is more complex than just deciding whether to apply or not to apply access charges. The solution will require far more creative approaches that will necessitate, among other things, consideration of the appropriate jurisdiction for Internet access and the investigation of market-based incentives that would direct Internet traffic to packet-switched networks. Until these types of solutions are explored, changing the ESP exemption might only achieve disrupting the marketplace rather than making it operate more efficiently.^{15/}

CompuServe and Prodigy (almost) could not have put it better.

II. FOR ISDN AND OTHER DERIVED CHANNEL SERVICES, THE COMMISSION SHOULD ADOPT A "PER FACILITY" APPROACH FOR ASSESSMENT OF SUBSCRIBER LINE CHARGES

In their initial comments, CompuServe and Prodigy explained at some length why the more rapid and widespread deployment of ISDN and similar derived channel technologies is important, at least on a near-term basis, as a means of enabling high-speed, high-quality transmission of voice, data, fax, and other information over ordinary local loops.^{16/} ISDN service allows the transmission of data at a speed almost five times faster than the speed achieved through the use of the modems most commonly in use today. For this reason, CompuServe and Prodigy urged the Commission to adopt the "per facility" approach to assessing subscriber line charges on ISDN and similar derived channel services and, in any event, to be sensitive to the impact on end users of Internet and online services of its decision.

^{15/} BellSouth Comments, at 87.

^{16/} CompuServe and Prodigy Comments, at 17-25.

The major local exchange carriers agree with CompuServe and Prodigy that the Commission should adopt the "per facility" approach. Bell Atlantic/NYNEX states that "[c]harging a single SLC for each network interface (1 SLC for every BRI; 1 for every PRI) will serve the goals of not discouraging use of this technology and allowing the costs causers to pay a reasonable cost-based charge."^{17/} The other RBOCs that comment on this issue support adoption of the "per facility" approach.^{18/} And they generally point out that assessing SLCs on a "per facility" basis is consistent with cost causation principles. As Ameritech stated:

SLCs were instituted to recover interstate loop costs from end user subscribers. Therefore, assessing he SLC on a per facility basis more closely reflects the manner in which the costs are incurred. Charging SLCs on a derived channel basis would substantially over-recover loop costs from ISDN subscribers.^{19/}

Pacific Telesis agrees with the point CompuServe and Prodigy made in their comments that even though there may be a greater difference in NTS costs where PRI rather than BRI ISDN is provided, "any additional revenues generated from imposing several SLCs on PRI service will be minimal given the low penetration of this service."^{20/}

^{17/} Bell Atlantic/NYNEX Comments, at 35-36.

^{18/} See, e.g., Ameritech Comments, at 13; BellSouth Comments, at 70; Pacific Telesis Comments, at 65.

^{19/} Ameritech Comments, at 13. Bell Atlantic/NYNEX states the per-facility approach allows "the costs causers to pay a reasonable cost-based charge." Bell Atlantic/NYNEX Comments, at 35.

^{20/} Pacific Telesis Comments, at 65.

For these reasons and the reasons cited in the initial comments of CompuServe and Prodigy, the Commission should adopt the "per facility" approach for assessing SLCs on ISDN and similar services.

III. AT LEAST PENDING FURTHER INFORMATION, THE COMMISSION SHOULD NOT PERMIT OR REQUIRE LECS TO IMPOSE A SEPARATE CALL SETUP CHARGE

In its initial comments CompuServe showed that establishment of call setup charges likely would have a very detrimental impact on important sectors of the economy, including those dependent upon efficient processing of financial transactions like credit cards, debit cards, ATM transactions, and check authorizations. CompuServe and others who carry these types of short duration data calls have had the incentive, in an access regime without call setup charges, to design and operate their value-added networks to handle these short duration as efficiently as possible. For example, the credit card verification calls handled by CompuServe average 12 seconds in length.

Both the Ad Hoc Telecommunications Users Committee and Bankers Clearing House, et al., urge the Commission to recognize the adverse impact that imposition of call setup charges is likely to have on the financial institutions and other businesses dependent upon efficient transactions processing.^{21/} As the Ad Hoc Committee states:

Significant segments of the national economy have priced their services based on signals that would become obsolete upon adoption of a call setup

^{21/} Ad Hoc Telecommunications Users Committee Comments, January 29, 1997, at page 19; Bankers Clearinghouse, et al. Comments, January 29, 1997, at page 6.

charge. These segments pervade or economy, and include any industry that relies even in part on transaction processing via the Public Switched Telephone Network.^{22/}

It also must be emphasized that the LECs which advocate that they be given the discretion to establish call setup charges provided no information at all concerning the costs they claim they incur for call setup or the rates they would propose. Absent such a complete lack of even pro forma information, it is difficult for the Commission to assess the public interest benefits that would flow from such a substantial change from traditional access pricing. Along these lines, Bankers Clearinghouse is certainly correct that "the Commission must determine whether the benefit of recovering call-setup costs separately outweighs the effort and expense of implementing the tracking and billing system needed to recover the costs at issue."^{23/} For it is undoubtedly true that "[i]f a separate call setup charge is imposed when it is not economically efficient to do so, the Commission will inadvertently encourage uneconomic bypass of the public switched network."^{24/}

Obviously, the Commission always has been and remains concerned about access charge actions which would encourage uneconomic bypass of the public switched network by major users such as the financial transactions processors who would be impacted most severely

^{22/} Ad Hoc Comments, at page 19.

^{23/} Bankers Clearinghouse Comments, at page 6.

^{24/} Id.

by implementation of call setup charges.^{25/} In light of this concern and the lack of supporting information presented by the LECs in support of call setup charges, it makes sense for the Commission to defer action on this issue at this time. The NOI on usage of the public network by enhanced service providers may well provide the Commission with useful information relating to the public policy aspects of allowing call setup charges. After all, the overwhelming number of short duration calls are enhanced service transmissions. As CompuServe said in its initial comments, the RBOCs claim that the increasing number of Internet and online calls whose duration is much longer than the average call duration is causing network congestion which imposes additional costs on the network.^{26/} If these claims were true -- and they are the types of claims that are to be examined in the NOI -- then it should follow that calls whose duration is considerably below average contribute in a positive way to the efficient operation of the public network. At the least, no action should be taken at this time which would encourage the ESPs who carry short duration data calls to migrate off the public network without the presentation of more detailed information.

^{25/} MTS and WATS Market Structure, 97 F.C.C. 2d. 682, 683 (1983); Access Charge Reform, CC Docket No. 96-262, FCC 96-488, December 24, 1996, at paras. 7-8.

^{26/} See, e.g., Pacific Telesis Group Comments, at page 78.

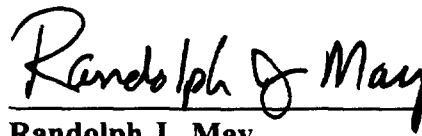
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IV. CONCLUSION

For the foregoing reasons and the reasons presented in their initial comments, the Commission should take actions consistent with the views of CompuServe and Prodigy expressed in response to the NPRM.

Respectfully submitted,

**COMPUSERVE INCORPORATED
PRODIGY SERVICES CORPORATION**

A handwritten signature in cursive script, reading "Randolph J. May", is written over a horizontal line.

Randolph J. May

**SUTHERLAND, ASBILL & BRENNAN
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2404
(202) 383-0100**

February 13, 1997

Their Attorneys

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CERTIFICATE OF SERVICE

I, Teresa Ann Pumphrey, hereby certify that a copy of the foregoing **Reply Comments of CompuServe Incorporated and Prodigy Services Corporation** was served by first-class mail, postage prepaid and by hand where indicated, this 13th day of February 1997, on the following persons:

Hon. Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Hon. Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Regina Keeney
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 500
Washington, D.C. 20554

(By Hand Delivery Only)
James D. Schlichting
Chief, Competitive Pricing Division
FEDERAL COMMUNICATIONS
COMMISSION
1919 M Street, N.W. - Room 518
Washington, D.C. 20554

Hon. James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Hon. Rachelle B. Chong
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

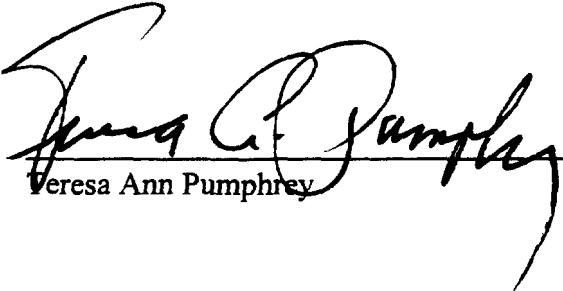
A. Richard Metzger, Jr.
Deputy Bureau Chief
FEDERAL COMMUNICATIONS
COMMISSION
1919 M Street, N.W. - Room 500
Washington, D.C. 20554

Elliot Maxwell
Deputy Chief, OPP
FEDERAL COMMUNICATIONS
COMMISSION
1919 M Street, N.W. - Room 822
Washington, D.C.

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Kevin Werbach
Office of Plans and Policy
FEDERAL COMMUNICATIONS
COMMISSION
1919 M Street, N.W. - Room 822
Washington, D.C.

International Transcription Service
Suite 140
2100 M Street, N.W.
Washington, D.C. 20554



Veresa Ann Pumphrey